IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 77-1867

JOSEPH LINDSAY CRANFORD,

Petitioner,

v.

STATE OF MARYLAND,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MARYLAND

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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PRELIMINARY COMMENTS

This Opposing Brief is filed pursuant to the request of this Honorable Court contained in the letter of its Clerk dated August 29, 1978.

OPINION BELOW

The Order of the Maryland Court of Appeals dismissing certiorari as improvidently granted appears at 282 Md. 255 (1978) and is contained in the Appendix to the Petition for a Writ of Certiorari filed herein. The opinion of the Maryland Court of Special Appeals is reported in 36 Md. App. 293, 373 A.2d 984 (1977), and is

also contained in the Appendix to the Petition filed herein.

JURISDICTION OF THE COURT

Petitioner invokes the jurisdiction of this Court pursuant to 28 U.S.C. 1257(3).

STATEMENT OF THE CASE

Petitioner, Joseph Lindsay Cranford, was tried and convicted on April 27 and 28, 1976, in the Circuit Court for Prince George's County, Maryland, of second-degree murder, the Honorable Samuel Meloy presiding at a jury trial. On May 3, 1976, he was sentenced to the jurisdiction of the Maryland Commissioner of Correction. From the conviction and sentence, he appealed to the Maryland Court of Special Appeals which affirmed his conviction in *Cranford v. State of Maryland,* 36 Md. App. 393, 373 A.2d 984, decided 6/9/77.

By an Order dated September 8, 1977, the Maryland Court of Appeals granted a Petition for a writ of certiorari to the Maryland Court of Special Appeals, but determined to dismiss the writ on April 3, 1978, as having been improvidently granted. Thereafter, Petitioner filed the within application for a writ of certiorari to this Honorable Court and Respondent's Brief is submitted in accordance with the letter of the Clerk of this Honorable Court dated August 29, 1978.

QUESTION PRESENTED

Was the Petitioner afforded due process of law in a case where his conviction was upheld on the theory of felony murder by the reviewing court where the Trial Judge did not set forth his reasons for denying the motion for judgment of acquittal?

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Constitution of the United States:

Amendment V

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury . . . nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb . . .

Amendment VI

In all criminal prosecutions, the accused shall enjoy the right . . . to be informed of the nature and cause of the accusation . . . and to have the Assistance of Counsel for his defence.

Amendment XIV

. . . nor shall any State deprive any person of life, liberty or property without due process of law . . .

Annotated Code of Maryland, Article 27, § 616, "Indictment for murder or manslaughter.

. . . in any indictment for murder or manslaughter, or for being an accessory thereto, it shall not be necessary to set forth the manner or means of death. It shall be sufficient to use a formula substantially to the following effect: That A.B., on the _____ day of _____ nineteen hundred and _____, at the county aforesaid, feloniously (wilfully and of deliberately premeditated malice aforethought) did kill (and murder) C.D. against the peace, government and dignity of the State."

STATEMENT OF FACTS[1]

At approximately 11:15 A.M. on 26 September 1975, the partially nude body of Mary Ann Bunten was found on the side of Church Road near Bowie, Maryland. The Assistant State Medical Examiner testified that the

[1] Reprinted in part from the opinion of the Maryland Court of Special Appeals.

cause of death was a stab wound that had severed the left iliac artery in the area of the vagina and rectum, thus causing her to bleed to death "in a matter of minutes". There was also evidence that the alcohol content of the victim's body was .39%, ". . . and [that] one could possibly be comatose with this degree of alcohol".

As a result of information obtained from those who had seen Mrs. Bunten during the 24 hour period preceding the discovery of her dead body, Cranford and his brother-in-law, William Lewis Wright, were questioned by the police. Each gave written statements concerning their contacts with Mrs. Bunten. Cranford's statement was introduced in evidence by the State. Wright's statement was not offered by either party.

According to Cranford's statement and his testimony at trial, the following occurred during the evening of 24 September and the early morning hours of 25 September: Cranford and Wright began the evening by attending Cranford's young son's birthday party, where they drank several beers. After the party they went to a restaurant and had more beer. After purchasing a six pack of beer each, they left that restaurant and went to Wilson's Tavern in Cranford's car. As they arrived at Wilson's, at approximately 9:00 P. M., they noticed Mrs. Bunten walking up the roadway near the tavern parking lot. Wright approached her and began talking to her, while Cranford entered the tavern and began "socializing" and drinking more beer. Some minutes later Wright entered the tavern and asked Cranford for the keys to his car. Wright and Mrs. Bunten then left in Cranford's car. Cranford remained inside the tavern "socializing" and drinking until approximately 1:30 A.M. when he went outside to wait for Wright to return with his car.

When Wright and Mrs. Bunten returned, Mrs. Bunten got in the back seat, Wright got in the front passenger

seat, and Cranford got behind the wheel. Cranford asked Mrs. Bunten, whom he had never met before, where she lived. She mumbled an address and the three drove off to find her house. Before leaving the parking lot, however, Wright "reached between the two seats and took" Mrs. Bunten's slacks down. At that point she was "quite drunk and couldn't tell me where she lived. She mumbled an address". He was unable to find her house. After driving around for a short while, he stopped at the parking lot of a steak house where he joined Mrs. Bunten in the back seat and Wright drove the car. While Wright was driving, Cranford attempted to have sexual intercourse with Mrs. Bunten on the back seat but was unable to do so "because of my drunken condition" and because "she was very dry". During the attempt, he was on top of her for "fifteen minutes, probably", during which time she was "conscious" but "quite drunk" and said nothing, nor did Cranford or Wright say anything. Wright then stopped the car and said " 'Let's switch' or something to that effect". Cranford then drove the car while Wright was in the back seat with Mrs. Bunten. Cranford said he did not know "what was going on in the back seat", but he "assumed they were having intercourse". After "approximately 20 minutes", Cranford stopped the car at Wright's request. Wright got into the front passenger seat. At that point Cranford saw that Wright "had blood on his hand and he [Wright] said that the woman had a miscarriage" or "was having her period" and that "we had to let her off".

Cranford stopped the car in a dark and lonely area along Church Road. He assisted Wright in removing Mrs. Bunten from the car. At that point, according to Cranford, she was "unconscious" and Cranford could see by the dome light of the car that she was bloody and that there was a large amount of blood on the back seat of the car. Wright carried Mrs. Bunten off to the side of

the road and left her there. When Wright returned to the car, Wright drove the car to Wright's apartment, where, at Wright's request, Cranford disposed of Wright's bloody clothes.

In his testimony concerning the drunken condition of Mrs. Bunten, the Assistant Medical Examiner testified how a person with .39 per cent, by weight, of alcohol in his blood would act:

> "There would be stupor, there would be a marked decrease in responses to stimuli, and one could possibly be comatose with this degree of alcohol."

ARGUMENT

I. & II.

THE PETITIONER WAS NOT DENIED DUE PROCESS IN A CASE WHERE HIS CONVICTION WAS UPHELD ON A THEORY OF FELONY MURDER BY THE REVIEWING COURT WHERE THE TRIAL JUDGE DID NOT SET FORTH HIS REASONS FOR DENYING THE MOTION FOR JUDGMENT OF ACQUITTAL AND THE PETITIONER WAS AFFORDED THE FIFTH AMENDMENT PROTECTION OF INDICTMENT BY A GRAND JURY IN THE STATUTORY FORM PROVIDED FOR UNDER § 616 OF ARTICLE 27 OF THE ANNOTATED CODE OF MARYLAND.

Petitioner initially claims that the felony murder theory was never litigated at his trial and that it was first injected into the proceedings at the appellate stage by the Respondent and, in turn, relied upon by the Court of Special Appeals in affirming his conviction. Petitioner goes on to assert that such a procedure ". . . introduced a new charge into the proceedings not contained in the indictment and not litigated at the trial of the case" (Br. 6). Petitioner's assertion that affirming his conviction on the basis of felony-murder was, in effect, the addition of the crime of felony murder is somewhat misleading just as is the contention that a "new charge" was introduced which was not contained in the indictment and not litigated at the trial.

Not only is felony-murder not a separate and distinct crime from murder generally under Maryland law, it should be noted that the crime of murder is a common law offense in Maryland and is only divided into degrees by statutes. *Stansbury v. State,* 218 Md. 255, 146 A.2d 17 (1958); *Lindsay v. State,* 8 Md. App. 100, 258 A.2d 760 (1969). Stated otherwise, murder in the first degree in Maryland is not a crime as such but a classification of the crime of murder. *Lynch v. State,* 9 Md. App. 441, 265 A.2d 283 (1970). As a consequence, under §616 of Article 27 of the Annotated Code of Maryland, an indictment for murder or manslaughter need only use the general language necessary to satisfy the notice requirement of the due process clause and to specify the victim and the date of the occurrence in such a manner that the defendant will be protected in the future from reprosecution in violation of the double jeopardy clause of the Fifth Amendment of the Federal Constitution. *Benton v. Maryland,* 395 U.S. 784 (1969). Contrary to Petitioner's assertion that Maryland law *apparently* does not require separate indictments for premeditated first-degree murder and felony-murder (citing *Weighorst v. State,* 7 Md. 442 (1885)), the above section of the Annotated Code (§ 616 of Article 27), explicitly provides that "it shall not be necessary to set forth the manner or means of death". The net result is that Petitioner attempts to carve out a separate and distinct crime from the crime of murder which under Maryland law classifies both felony-murder and premeditated murder as first-degree murder. Unquestionably, Petitioner was put on notice as to the operative facts by the indictment as prescribed by Maryland law.

Petitioner's reliance on *Ornelas v. United States,* 236 F.2d 392 (9th Cir. 1956), and *United States v. Antelope,* 377 F. Supp. 193 (D.C. Idaho, 1974), *aff'd* on rehearing, 555 F.2d 1376 (9th Cir. 1977), is misplaced. In *Ornelas,* the United States Court of Appeals for the Eighth

Circuit was addressing the question of whether an indictment which contained the statement that the murder was "without premeditation" was defective as charging only second-degree murder, the appellant there having been tried for first-degree murder. In *Antelope* the sole question was whether or not the defendant was afforded ample notice by an indictment which accused the three defendants of murder with malice aforethought while the robbery was charged in count 2 of the indictment. There the court was confronted with whether or not there was sufficient notice pursuant to 18 U.S.C.A. §§ 1111, 1111(a), 1153, and 2111. In the instant case, this court is not confronted with the notice requirement as to any federal statute and, as stated hereinbefore, the form prescribed for an indictment for murder in Maryland unquestionably puts an accused on notice to defend against murder generally rather than any specific degree of murder or manslaughter. The practice of charging murder by the general formula has been approved by the Maryland Court of Appeals in *Neusbaum v. State,* 156 Md. 149, 143, A. 872 (1928), and the Maryland Court of Special Appeals in *West v. State,* 3 Md. App. 123, 238 A.2d 292 (1968). In view of the statutory form of indictment in charging murder in Maryland, the notice requirement is clearly satisfied as is the requirement that the crime be sufficiently charged to prevent a violation of the double jeopardy clause of the Fifth Amendment.

As to the assertion that an indictment must charge with precision and certainty all of the elements necessary to constitute the offense intended to be punished (citing *United States v. Carll,* 105 U.S. 611 (1881)), Respondent most respectfully urges that again the offense has been sufficiently set forth in the indictment and an accused is entitled to no more than notice of the operative facts which need not include the

theory underlying the offense. In *United States v. Smolar,* 557 F.2d 12 (1st Cir. 1977), the First Circuit Court of Appeals held that the defendants were not sufficiently apprised of the nature of the charges against them in a case which involved fraud against the shareholders of a fund in which unregistered warrants having little if any value were purchased at the price of $29,400.00. It is clear that in such circumstances the theory of the prosecution's case is important to permit the accused to defend properly. In *Watson v. Jago,* 558 F.2d 330 (6th Cir. 1977), it was held that "*under Ohio law,* a felony-murder conviction cannot be sustained under an indictment charging first-degree murder with premeditated and deliberate malice". It should be noted that the Ohio Revised Code, § 2901.01, apparently creates a substantive crime of felony-murder in contrast to Maryland which only divides the common law offense into degrees. Thus, none of the authorities cited by the Petitioner are supportive of his claim of a denial of due process.

It is urged by Petitioner that this Court should reconsider the rule laid down in *Hurtado v. California,* 110 U.S. 516 (1984). In response to this assertion, Respondent most respectfully urges that the rule of *Hurtado* is well-founded since the charging process in a criminal proceeding is uniquely a state function and subject to several considerations, including, but not limited to, how the offense is delineated by statute or whether it is derived from the common law. Respondent thus urges that this Court should not disturb that rule in view of the sound underlying rational. In any event, the rule should not be disturbed in the instant case since there is really no constructive amendment between the indictment and the evidence produced against the Petitioner. As set forth in detail hereinbefore, the general formula for charging murder in Maryland incorporates both the offenses of premedi-

tated first-degree murder and felony-murder. Parenthetically, it should be noted that Petitioner was convicted of murder in the second degree and thus the whole discussion is somewhat academic in view of the fact that the asserted change in the theory of the State's case occurred subsequent to the second-degree murder conviction.

Finally, as noted by the Maryland Court of Special Appeals, no reason was given for the denial of the Petitioner's Motion for Judgment of Acquittal and, while it is true that the State of Maryland did not try the case on the theory of felony-murder, the evidence of Petitioner's commission of the felony (attempted rape) was unquestionably before the trial judge for his consideration. The evidence of the Petitioner's attempt to have sexual intercourse having been before the trier-of-fact, the Petitioner had the opportunity and indeed made the attempt — to defend against the sexual offense as well as the murder.

CONCLUSION

Respondent respectfully urges, for the foregoing reasons, that the Petition for a Writ of Certiorari to review the judgment and opinion of the Maryland Court of Appeals be denied.

Respectfully submitted,

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